IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6519 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJESHBHAI MULJIBHAI SIMBALIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6519 of 2001

MR AS SUPEHIA for Petitioner No. 1

MR PITAMBAR ABHICHANDANI Ld. AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 13/09/2001

ORAL JUDGEMENT

Rule. Mr. Pitambar Abichandani learned AGP waives service of rule on behalf of respondents. At the request of the learned counsel for the parties, the matter is finally heard today.

Heard learned counsel Mr. Supehia for the petitioner and Mr. Abichandani learned AGP for the respondents. It is the say of the petitioner that the petitioner's father was serving as Assistant Sub-Inspector of Police in Ahmedabad (Rural) District It is contended that his father expired while in service, on 30.3.99. The petitioner has applied for compassionate appointment, as per the policy of the respondent-State, by a written application dated January 2000 (copy is at Annexure-A to this petition). The copy of reply given by the Additional Director General of Police dated 23.2.2001, is at Annexure-C whereby the department has refused the request stating that the income of the family of the deceased is more than Rs. 2500/ p.m. According to learned AGP Mr. Abichandani this decision was taken in accordance with rules and after due deliberations. It is also contended that the Government resolution dated 1.9.97 was taken into account by the authorities while rejecting the request for compassionate appointment.

I have gone through the averments made in the petitioner and annexures attached to it. Learned counsel appearing for the petitioner mainly relies on the decision of this Court in the case of Dilipsinh B. Rathod Vs. State of Gujarat (Special Civil Application No. 11020 of 1993) dated 1.1.1999 (Coram: M.R. Calla, J.). This Court (Coram: M.R. Calla, J.) after considering all relevant aspects and proposition reflected in the policy of the Government held that the authorities ought not to have considered the income of Rs. 450/ while calculating the total income which was received by the widow i.e. petitioner's mother. This Court (Coram: M.R. Calla, J.) allowed the petition and directed the respondent-State to consider the request for compassionate appointment if the petitioner is otherwise eligible incumbent for such appointment.

The above referred decision of this Court was carried by the respondent-State in appeal being L.P.A. No. 739 of 1999. The petitioner has produced the copy of the decision of this Court and the Division Bench of this Court while considering the say of the appellant-State has observed that :-

"The learned Single Judge, relying upon the decisions of this Court in C.B. Maru vs. Dhandhuka Nagar Panchayat, 1993(2) GLH 822 and Manubhai Godhabhai Desai vs. State of Gujarat, 1998(1) GLH (UJ) 23, held that the contention put forward by the authorities cannot be accepted.

> In C.B. Maru's case, the Court considered a decision of the Supreme Court in Smt. Phoolmati vs. Union of India, AIR 1991 SC 469. Learned Single Judge accordingly allowed the petition and directed the respondent authorities to decide the case of the petitioner on its own merits considering him to be eligible."

The above legal proposition would squarely be made applicable to this case. Mr. Supehia has rightly submitted that this present case is covered by the decision of the Division Bench in above Letters Patent Appeal No. 739 of 1999. The Department is therefore, directed to decide the case of the petitioner on merits considering him to be eligible provided that his income does not exceeds Rs. 2500/ excluding the amount of pension received by the family on account of death of petitioner's father. The respondent-department is expected to take decision within 8 weeks from the date of receipt of the order.

Rule is made absolute to the aforesaid extent only. DS permitted.

(C.K. BUCH, J.)
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